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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

DA 92-876

In The Matter of the  
Application of

RICHARD BURTON  
Harbor City, California

For Amateur Station  
and Operator Licenses

PR Docket No. 92-144 ✓

**HEARING DESIGNATION ORDER**

**Adopted:** June 29, 1992

**Released:** July 9, 1992

1. Mr. Richard A. Burton has applied for amateur service station and operator licenses. For the reasons stated below, his application will be designated for a hearing to determine whether the application shall be granted.

2. On September 11, 1981, the Commission revoked Burton's license for amateur station WB6JAC and affirmed the suspension of his General Class amateur operator license. These actions were based on Burton's willful and repeated violations of the Commission's Rules.

3. In United States of America v. Richard A. Burton, No. CR 82-378-R (C.D. Calif. June 28, 1982), Burton was convicted in the U.S. District Court for Central District of California (District Court) on four counts of transmitting without a license, in violation of Section 318 of the Communications Act of 1934, as amended (Communications Act), 47 U.S.C. § 318,<sup>1</sup> and on two counts of transmitting obscene, indecent or profane words, language or meaning, in violation of 18 U.S.C. § 1464.<sup>2</sup> The District Court sentenced Burton to eight years of imprisonment, of which six months were to be served in a jail-type institution and the remainder suspended. Burton was also placed on

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<sup>1</sup> 47 U.S.C. § 318 provides, in pertinent part: "The actual operation of all transmitting apparatus in any radio station for which a station license is required by this Act shall be carried on only by a person holding an operator's license issued hereunder, and no person shall operate any such apparatus in such station except under and in accordance with an operator's license issued to him by the Commission ...."

<sup>2</sup> 18 U.S.C. § 1464 provides: "Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined not more than \$10,000 or imprisoned not more than two years, or both."

probation for five years and required to devote 1,500 hours to a charitable organization approved by his probation officer.

4. Upon appeal, the U.S. Court of Appeals for the Ninth Circuit (Court of Appeals) affirmed Burton's conviction of having violating 47 U.S.C. § 318, and reversed his conviction concerning 18 U.S.C. § 1464. United States of America v. Richard A. Burton, No. 82-1391 (9th Cir. October 25, 1983). On January 16, 1984, the District Court resentenced Burton. On or about October 1, 1984, the Court of Appeals ruled that the January 16, 1984, resentencing was invalid. On December 17, 1984, the District Court again resentenced Burton. Burton was sentenced to four concurrent one year terms of imprisonment, of which six months was to be served in a jail-type institution and the remainder suspended. Burton was also placed on probation for five years. On December 31, 1984, Burton violated the terms of his probation by operating radio apparatus without a license. As a result, his sentence was modified on May 1, 1985, to include therapy during the period of his probation.

5. On March 17, 1990, Burton again transmitted without a license. In United States of America v. Richard A. Burton, No. CR-90-357-RMT (C.D. Calif. October 1, 1990), Burton was again convicted of having violated 18 U.S.C. § 318. Burton was sentenced to one year of probation and a fine of \$2,000.

5. In view of the amateur license revocation/suspension and the criminal convictions described above, it appears that Burton may lack the requisite qualifications to become an amateur service licensee. Certainly, his convictions for unlicensed operation are relevant to evaluating the likelihood that he will comply with the Commission's Rules as a licensee in the amateur service. See Character Qualifications, 5 FCC Rod 3252 (1990); TeleSTAR, Inc., 3 FCC Rod 2860, 2866 (1988); Character Qualifications, 102 FCC 2d 1179, 1183, recon. denied, 1 FCC Rod 421,424 (1986).

6. Section 309(e) of the Communications Act, 47 U.S.C. § 309(e), requires the Commission to designate an application for hearing if it is unable to find that granting the application would serve the public interest, convenience and necessity. Accordingly, the application of Richard A. Burton for amateur station and operator licenses is hereby DESIGNATED FOR HEARING pursuant to Section 309(e) of the Communications Act. If Burton desires to present evidence at a hearing, he must file a notice of appearance within 20 days from the release of this order. A time, place, and Presiding Judge will be designated, if necessary, by later order. If Burton does not file a timely notice appearance, his application will be subject to dismissal under Section 1.961(b) of the Commission's Rules, 47 C.F.R. § 1.961(b).

7. Based upon the above information, this case will be decided upon the following issues:

- (a) To determine whether, in light of the license revocation/suspension and the convictions described above, Richard A. Burton is qualified to become a Commission licensee.

- (b) To determine, in light of the foregoing issue, whether granting Richard A. Burton's application would serve the public interest, convenience and necessity.

FEDERAL COMMUNICATIONS COMMISSION

*Robert H. McNamara*

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